



REQUEST FOR PROPOSALS

FOR

DETENTION CENTER COMMISSARY SERVICES

ISSUE DATE: MAY 9, 2023

DUE DATE: MAY 23, 2023

1. PROJECT OVERVIEW

Brunswick County and the Brunswick County Sheriff's Office request proposals from qualified and experienced contractors for the purpose of contracting for detention center commissary services for the Brunswick County Detention Center located at 70 Stamp Act Drive in Bolivia, North Carolina. This facility (the "Jail") houses adult male and female detainees, male juvenile detainees, and some sentenced inmates, generally having sentences of less than three months. The average daily population of the Jail over the past 12 months has been 260 due to Covid-19 pandemic protocols, with the anticipated average increasing back to 350 in the coming year(s). The average length of stay for inmates is 90 days or less. There are a total of 440 beds including 80 female and 28 segregation beds. The proposal should be based on an average daily population of 350.

Only contractors who have demonstrated the ability to provide detention center commissary services at competitive rates, with timely delivery of services, and abiding by policies/procedures of comparable detention facilities will be considered for award of the contract.

The awarded contractor will not be an employee or agent of Brunswick County or the Brunswick County Sheriff's Office; furthermore, neither Brunswick County nor the Brunswick County Sheriff's Office will pay for any information herein requested nor any costs associated with activities associated with the submission of this proposal.

2. SCOPE OF WORK

The Brunswick County Sheriff's Office has established the following objectives and minimum requirements for this project. Any changes to the specifications or Scope of Work will be made in the form of an Addendum to this Request for Proposals and will be supplied to all known prospective contractors and posted on the Brunswick County website. Notwithstanding the foregoing, contractors will be responsible for ensuring that they have all addenda. Brunswick County and the Brunswick County Sheriff may negotiate and refine the final Scope of Work with the selected contractor. Brunswick County and the Brunswick County Sheriff reserve the right to negotiate additional services with the selected contractor at any time after the initial contract award.

MINIMUM REQUIREMENTS

2.1 Installation requirements

The contractor will provide and install the proposed system, at no cost to the County or Sheriff's Office, and provide all supporting documentation for said system to include, without limitation, user manuals and warranty information, within sixty (60) days of contract award and execution. The Contractor shall oversee and assist in the initial set-up of the proposed system.

Turnkey Installation – The contractor shall be responsible for all costs associated with the inmate commissary system, including but not limited to, purchase of equipment, installation, service, maintenance, data network, and day-to-day operations. Neither the County nor the Sheriff's Office shall have responsibility for any costs associated with the

system or the installation of the system. This includes any additional equipment associated with any future expansion of housing units while the contract is in effect.

The contractor is responsible for determining all wiring and software requirements, including, without limitation, compatibility with the existing system as more particularly set forth herein, and costs associated with the conversion of service from the current inmate commissary system provider to the contractor. The contractor shall coordinate all details of switching out services with the current service provider with little or no down time during switch over. All information must be transferred from the current provider in approximately the same format, i.e. "haircut fee" to "haircut fee," with an entry for all line items that are listed in the current system and any others as County or Sheriff may reasonably request.

2.2 Service and Support Requirements

The contractor shall be responsible for the maintenance and support on a twenty-four (24) hour, seven (7) day per week basis. The contractor shall respond, either in person or remotely, to a telephone request for maintenance within four (4) hours after initial notification.

The contractor will describe, in detail, their company's service and maintenance program including, without limitation, remote access, diagnostics, downloading and troubleshooting. All costs for maintenance, support, and repair of all software and equipment will be borne by the contractor and will not be deducted from any commissions. During the term of any contract awarded as a result of this Request for Proposals, the contractor agrees to provide maintenance to diagnose problems, determine proper solutions, and provide:

- The implementation of any required solutions, changes, modifications, updates or other services which are necessary to allow the software, hardware and any other commissary equipment to perform in accordance with the specifications as set forth in this Request for Proposals.
- Upgrade the software and/or hardware to its required performance standards as required in this Request for Proposals.
- Support provided via a toll-free number by which Jail personnel may speak with a live company representative.
- The number of support facilities and their location.
- The total number of employees and the percentage of total employees who provide technical support.

The contractor shall provide effective training to the County and Sheriff's Office personnel as may be requested by County or Sheriff's Office. This will include, but not be limited to, training for Jail personnel in maintaining inmate accounts as necessary on contractor's software and hardware. The proposal must specify the scope and content of the training to be provided.

Neither the County nor the Sheriff's Office shall be responsible for damage to the contractor's equipment occurring because of an inmate's use or vandalism of the equipment. Notwithstanding the foregoing, the County and Sheriff's Office will make reasonable efforts to prevent such acts.

The contractor will provide a narrative description of standard operating procedures for normal system administration tasks specific to the contractor's software. This description should include/identify any specialized technical skills that will be required by County or Sheriff's Office personnel and recommended guidelines for file backup.

Contractor represents and warrants that all software installed pursuant to the awarded contract, and all systems attaching to the County communication services, shall be free of malware, including, without limitation, spyware, ransomware, adware, viruses, worms, Trojans, rootkits, keyloggers, bots, etc. The contractor shall provide, document, and comply with anti-virus software licenses and County and Sheriff's Office virus scanning procedures prior to accessing or installing software within the County environment.

Contractor agrees that in the event of any actual or suspected cybersecurity breach, or any actual or suspected unauthorized access, disclosure, or use of data, including, without limitation, inmate data, contractor shall be solely responsible for containing such security breach, mitigating potential risks to affected individuals, and immediately notifying the County and Sheriff's Office, affected individuals, and regulatory authorities where required by law. Immediate notification to the County and Sheriff's Office shall be telephonic followed by a detailed, written confirmation of such actual or suspected breach. Contractor shall be solely responsible for all costs or expenses associated with any remedial actions and notifications.

Remote access is to be coordinated through the Sheriff's Office IT Division. The contractor is responsible for purchasing and maintaining any remote access software used to access appropriate systems.

When recommending or performing future software upgrades and/or fixes, the contractor is responsible for informing the Sheriff's Office of potential impacts on existing hardware and operating system configurations. Specifically, the contractor must notify the Sheriff's Office in advance that software enhancements will require modifications to workstation configurations. Future software upgrades and/or fixes shall not adversely impact existing hardware/operating system configurations or operation.

2.3 Accounting Software Requirements

The contractor shall provide a computerized Inmate Trust Fund (ITF) Accounting Software System, adhering to generally accepted accounting principles and capable of being audited by the Sheriff's Office and/or County. The ITF software shall integrate with the Jail management system (JMS), currently CentralSquare Pro, to import any inmate information required for the ITF.

COMMISSARY SERVICES

The contractor shall provide commissary services to the inmates at least once per week. Additionally, contractor shall provide at least one (1) employee to act as the distributor and auditor of inmate orders, as well as the liaison to contractor and Jail.

No items will be stored on site, except snack bags that are ordered weekly to provide to inmates throughout the week. The current weekly order is 200 bags. The foregoing is an estimate only based on current quantities. There will be no guaranteed minimums or

maximums under the awarded contract. The contractor will provide approved commissary product delivery to the Jail premises at least once per week. The delivery schedule may be modified as the population increases or as mutually agreed upon by the contractor and the Jail.

Individual inmate commissary orders are to be delivered in heat-sealed, clear plastic bags. Each order should have two (2) copies of the order receipt sealed within the packaging. The receipt should contain the following information:

- Inmate Name
- Inmate Location
- Inmate System Number
- Items and Quantity Ordered
- Total of Order
- Balance of Account after Order

The contractor must be able to restrict commissary orders as to items and amount based on location and by inmate based on facility-imposed restrictions as deemed necessary for the effective, safe, and secure operation of the Jail and management of inmates.

The contractor and Jail personnel will meet and mutually agree upon the items to be carried in the Commissary program. Any changes to the items to be carried in the Commissary program must be approved by Jail personnel in writing in advance.

The contractor shall make commissary items available for purchase by all inmates including, but not limited to, hygiene products, writing materials, games, snacks, candies, and a limited selection of clothing items. No item may be deleted, or have a change in brands, packaging, or sizes without mutual written agreement between authorized the Jail personnel and contractor.

Items offered in the Commissary must meet the following specifications:

- Food items shall be wrapped/packaged and dated for individual consumption.
- All containers shall be made of unbreakable material and clear where available.
- Combs shall be made of unbreakable plastic and no longer than three (3) inches.
- All consumable products shall be nonalcoholic.

As part of its submitted proposal, the contractor must submit a suggested menu of products with suggested retail prices that include the cost of all services and the percentage of profit to the Jail to be realized by the sale of said items based on the suggested retail prices.

The contractor agrees that, in the event of a request for adjustment in any product unit price, the contractor shall notify the Jail in writing of the requested adjustment, the requested effective date, and provide justification of the requested adjustment at least thirty (30) days prior to the requested effective date of the adjustment. The Jail must agree in writing to any change in retail selling price, and/or change in any profit percentage, prior to a price adjustment going into effect. Notwithstanding anything to the contrary

contained herein, the Jail reserves the right to determine the final retail selling prices of all commissary items.

The contractor shall maintain sufficient stock levels in order to limit shortages. The contractor shall not substitute and shall have an order fill rate of greater than 98%. The population of the Jail is not static and changes very rapidly. The Jail requires a greater than 98% completed order percentage to reduce the number of credits and accounting problems, and for inmates that have been released during order processing. Back orders will not be allowed. The contractor shall provide refunds to inmates for commissary products not delivered within five (5) business days.

After an initial start-up period not to exceed three (3) months, failure by contractor to maintain a greater than 98% completed order percentage on an average basis will be considered a breach of contract, and County may terminate the contract pursuant to the terms therein.

The contractor will provide special packages for inmates that are indigent or on Writ to the Jail. The packages will contain pre-stamped envelopes, paper, pen, soap, deodorant, toothbrush, toothpaste and such items as mutually agreed upon by the contractor and the Jail. The content of these packages is subject to change at the discretion of the Jail. The packages may be ordered individually by the inmate each week.

The contractor shall submit an invoice on a weekly basis that will detail and total the amount of the inmate gross sales for the preceding week.

Gross (sales) receipts shall be construed to be all monies received from the sales of merchandise, products, or services, less any refunds, allowances, or adjustments for defective, missing, or unsatisfactory merchandise, products, or services. These items must be detailed on a report to accompany the weekly sales invoice, which will enable County to timely credit the inmate's account. This weekly report must also include that week's completed order percentage (fill rate). Notwithstanding the foregoing, County will not allow returns on any items ordered by inmates. In the event an inmate is released from custody prior to their commissary order being delivered, the inmate will have three (3) days to pick up the order. If not picked up, the order will be considered a donation to the jail. An exception may be made for online purchases made by friends and family.

COMMISSION STRUCTURE

In exchange for the right to provide commissary services to inmates of the Jail, contractor shall be responsible for all costs associated therewith.

The contractor shall, on a monthly basis, submit a report of weekly sales for the previous month. A check will be issued monthly by the Jail from the Inmate Trust Fund (ITF) for goods received upon receipt and verification of the report. Notwithstanding the foregoing, the costs related to the Commissary operation and the ITF Accounting System are the sole responsibility of the contractor and are to be covered in the selling prices of the commissary products to the inmates. Additionally, the Commissary operation shall provide a return of profit to the Jail.

The Jail shall receive monthly commissions from the contractor based on monthly net sales less any allowable refunds, allowances, or adjustments. The contractor must provide the formula used in determining net sales to the Jail in its submitted proposal. Commissions must be paid monthly to the Jail or at such other intervals as mutually agreed in writing.

The contractor may submit any other pertinent information that will assist the Jail in evaluating the potential revenue and benefits for their proposal. This may include additional features or capabilities available by virtue of the commissary and/or ITF Accounting systems installation. All costs should be detailed for each additional feature.

MAIL SERVICES

In addition to the foregoing commissary services, contractor shall also provide software to assist with inmate mail processing, specifically the ability to scan and electronically deliver mail to an inmate's account. Jail personnel will be responsible for all required security or other pre-screening associated with inmate mail prior to scanning.

HARDWARE AND SOFTWARE

2.4 Hardware:

All commissary equipment provided shall be new and completely operational within sixty (60) days of contract execution.

Workspace is limited, and the Jail prefers to have one computer at each workstation location. The total number of workstations will be thirteen (13) kiosks in the blocks and/or dorms, three (3) banking kiosks in the lobby, intake, and releasing, and access to the ITF on at least ten (10) administrative computers.

Preference will be given to proposals that allow the Jail to run contractor's ITF Accounting System Software and Jail's JMS along with other software programs on existing workstations. Preference will also be given to proposals whose systems utilize cloud-based servers that require no on-premises server hardware. Active Directory integration is preferred for managing staff access and control.

Inmate kiosks will initially be capable of providing the following information to the inmate:

- Kiosk must be bilingual
- Current balance
- Account history
- Commissary order entry
- Static page for facility to post information
- Grievance capabilities
- Request to join programs such as GED and church
- Request to speak with a Chaplain
- Submit a General Inquiry
- Request a haircut
- File a sick call
- Fill out a property request
- Request a release date

All inmate kiosks shall be durable, corrections-quality kiosks suitable for use in a Jail, tamperproof, waterproof, and fireproof, with steel encased housings and shockproof keypads. All inmate kiosks must be mounted firmly to the wall including cabling to support the kiosk. Mounting will be done in a secure manner and approved by authorized Jail personnel.

The contractor will be required to work with the Jail to discuss and coordinate modifications to services as needs arise or may arise. This may be facilitated with annual reviews of the systems by both the contractor and Jail.

Bilingual technical and kiosk support must be provided at no additional charge by the Contractor's dedicated technical staff, 24 hours per day, and 365 days per year via a toll-free phone line that reaches a live person.

Installations, training, and technical support must be provided by the contractor's dedicated technical staff and may not be provided by a third party.

2.5 Software:

Contractor must supply software licensed on at least ten (10) administrative computers, thirteen (13) Kiosks, three (3) banking kiosks in the lobby, intake, and releasing. However, this need could also increase over time.

The contractor commissary software must be directly linked to the contractor's host billing system so that purchases and credits posted in the commissary software will automatically generate the contractor invoices and credits.

The contractor must provide robust data security features that will safeguard sensitive information, such as inmate and staff data, inventory information, and financial data, as more particularly set forth above. Such security features must be detailed in contractor's submitted proposal.

The contractor must submit with its proposal a comprehensive data backup and recovery plan to ensure that data is not lost in case of system failure or other disasters.

There shall be **no cost** to the County or the Sheriff's Office to integrate with a JMS.

The contractor must provide technology which allows family members and friends to deposit money into an inmate's account by these methods:

- Secure Website (credit/debit card) (Website security will be industry standard)
- 24-hour call center/toll free number (credit/debit card)
- Lobby Kiosk

Any applicable service fees shall be disclosed in advance to all affected parties and are not to be charged back to the County.

All deposit methods must be linked with the contractor's software and so that the deposits are electronically transferred on a real-time basis to the inmate's account.

Contractor must provide the Jail a password and username to securely access the online interface to facilitate functions including, but not limited to, downloading reports or files, view and/or cancel payments, and investigate/monitor payments.

Contractor must guarantee all payments, eliminating the County and the Jail from liability for fraudulent or cancelled payments.

The Commissary System must be available 24 hours, 7 days per week, and 365 days per year.

3. PROPOSAL DEADLINE AND SUBMISSION REQUIREMENTS

3.1 All proposals must be received by Brunswick County no later than 5:00 p.m. ET on May 23, 2023.

3.2 All proposals must include the following:

- The proposal title and due date and time.
- A cover letter/letter of intent on contractor's letterhead, signed by an authorized representative of contractor, expressly agreeing to Brunswick County's terms and conditions contained in this Request for Proposals and its attachments.
- The contractor's name or company name, address and telephone number.
- The name, address and telephone number of company representatives with the authority to answer questions or provide clarification regarding the proposal's contents.
- A list of key personnel to be assigned to perform the services and each person's qualifications. Personnel should possess relevant and diverse knowledge and expertise in their respective fields.
- The names of any and all subcontractors expected to perform services in connection with the project and their qualifications. Include the estimated percentage of work that each subcontractor is expected to perform. **Brunswick County reserves the right to accept or reject any proposed subcontractor.**
- A detailed and itemized pricing list and products example that would be provided to inmates to review and make purchases.
- An itemized example of invoice showing breakdown of expenses and any other applicable charges due to Contractor.
- Detailed information regarding the commission structure, including the specific commission rate that will be paid to County.
- A detailed example of report or reports showing expenses, any other charges/fees, commissions, and revenues to be provided to Jail.
- A full description of services and processes that will be implemented and ongoing to complete the project in the most efficient, timely and comprehensive manner. The description should include a detailed implementation plan and project schedule outlining the primary tasks, estimated hours, responsibility, major deliverables and timing, including an estimated start date. Additional project deliverables are set forth below.
- Any assistance requirements from Brunswick County.
- A detailed company description and history, including the areas of expertise related to the project.

- A reference list of at least three (3) current projects or projects completed within the past twenty-four (24) months for projects of similar size and scope, including the name and telephone number of a contact person for each reference listed.
- Certificate of Insurance as evidence that contractor meets the County's Minimum Insurance Requirements attached hereto.

Contractors shall provide documentation sufficient to clearly demonstrate that their firm meets or exceeds the requirements set forth in this Request for Proposals. Failure to provide such documentation may result in the proposal being deemed non-responsive.

In addition to the foregoing, Brunswick County reserves the right to request financial information for any contractor, in order to support the viability of the contractor.

Those interested should submit three (3) hard copies and one (1) electronic copy of the proposal. Proposals may be mailed, hand delivered, faxed, or emailed to the following:

Mail: Brunswick County Sheriff's Office
Attn: Elizabeth Bynum, Comptroller
P.O. Box 9
Bolivia, NC 28422

Hand Delivery: Brunswick County Sheriff's Office
Attn: Elizabeth Bynum, Comptroller
70 Stamp Act Drive
Bolivia, NC 28422

Phone (for delivery): 910-253-2855

Email: BCSO-RFP@brunswickncsheriff.gov

Proposals must be received no later than 5:00 p.m. ET on May 23, 2023. Brunswick County will not be responsible for the failure of any mail or delivery service to deliver a proposal prior to the stated date and time. Regardless of the manner of submission, any proposal received after the stated date and time will not be considered. Incomplete proposals or proposals inconsistent with the required format may be disqualified from consideration.

4. EXPENSES

Brunswick County will not be responsible for any costs or expenses incurred by the contractor in submitting a proposal or for any other activities associated with this procurement. Further, Brunswick County reserves the right to cancel the work described herein prior to issuance and acceptance of any contractual agreement even if the Board of Commissioners has formally accepted the recommendation.

5. RIGHT TO SUBMITTED PROPOSALS AND SUPPORTING DOCUMENTS

All written correspondence, proposals and supporting documents received by Brunswick County in connection with this Request for Proposals will become the property of Brunswick County. Brunswick County reserves the right to use any ideas in a proposal or supporting documents regardless of whether the proposal is selected.

6. QUESTIONS/ADDENDA

Questions or requests for further information regarding this Request for Proposals shall be submitted via email to **BCSO-RFP@brunswickncsheriff.gov** no later than 5:00 p.m. ET on May 16, 2023. A copy of all questions, further clarifications and answers will be made in the form of an Addendum to this Request for Proposals and will be provided to all known contractors and posted on the County's website. Notwithstanding the foregoing, contractors will be responsible for ensuring that they have all addenda.

Contractors are expressly prohibited from contacting any Brunswick County official or employee regarding this Request for Proposals, except in the manner noted in this section. A violation of this provision is grounds for the immediate disqualification of the contractor.

7. FORM OF AGREEMENT

In addition to the terms and conditions contained in this Request for Proposals, by submitting a proposal, contractor, if selected, agrees to enter into and be bound by the provisions of a Services Agreement in substantially the form attached hereto and incorporated herein by reference. To the extent that any of the terms of this Request for Proposals and the terms of the Services Agreement conflict, the terms of the Services Agreement shall prevail. No work shall commence until an agreement has been fully executed by the parties. Unless otherwise approved by Brunswick County, the contractor must begin performing services within thirty (30) days after an agreement is signed.

8. INSURANCE

Contractor, and any of its approved subcontractors, must procure and maintain in full force and effect during the term of any agreement with Brunswick County, or the renewal of any agreement with Brunswick County, the insurance coverage set forth in the Minimum Insurance Requirements attached hereto and incorporated herein by reference.

In the event contractor, or any of its approved subcontractors, fails to maintain insurance as outlined herein, Brunswick County may, at its option, obtain the required insurance at the expense of the contractor.

9. PROPOSAL CONDITIONS

9.1 Submission of a proposal indicates explicit acceptance by the contractor of the terms and conditions contained in this Request for Proposals and any attachments hereto. Brunswick County reserves the right to reject, without prejudice or explanation, any or all proposals. Brunswick County reserves the right to waive informalities or to amend the specifications of this Request for Proposals and request new proposals at any time prior to the award of a contract. All decisions of Brunswick County shall be final and binding.

9.2 The contractor shall supply the following:

- A single point of contact through proposal acceptance. Brunswick County will communicate solely through this contact regarding all issues relating to the proposal through acceptance.
- A single Project Manager, after acceptance, dedicated and available for the entire duration of the project. The Project Manager may only be replaced upon approval by, or at the request of Brunswick County. At a minimum, the contractor's Project Manager shall be responsible for oversight and management of the Scope of Work as outlined above.

10. CONSIDERATION OF WITHDRAWAL AND/OR REJECTION OF PROPOSAL

10.1 Withdrawal

After submission, no proposal may be withdrawn by the contractor for a period of ninety (90) days following the opening date. Until that time, the proposal will remain firm and irrevocable and any required bond will be forfeited.

10.2 Rejection

A proposal may be rejected if the contractor fails to:

- Submit the proposal in the format specified.
- Supply the minimum information requested.
- Submit all addenda, addenda responses and templates.
- Submit the proposal by the date and time required.
- Submit a cost proposal with unbundled, detailed and itemized pricing.
- Provide truthful and accurate information in the proposal.

10.3 No Acceptance

Brunswick County reserves the exclusive right to reject any or all proposals, to waive any informalities or technical defects in proposals, and to accept any proposal deemed most favorable to Brunswick County.

10.4 Competency of Contractor

Brunswick County shall make such investigation as it deems necessary to determine the ability of the contractor to perform the work, and/or provide the services required by this Request for Proposals. Upon request by Brunswick County, the contractor shall furnish satisfactory evidence that it has the necessary facilities, ability and financial resources to fulfill the specifications and conditions of the proposal.

11. EVALUATION AND AWARD

Brunswick County reserves the right to award a contract, based on initial proposals received from contractors, without discussion and without conducting further negotiations. Brunswick County may also, in its sole discretion, initiate further discussions with contractors that it deems to fall within a competitive range. Award shall be made to the contractor that Brunswick County determines submits the best value proposal, taking into consideration, without limitation, price; performance; quality; the contractor's past performance; and the evaluated probability of performing the requirements on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. Proposals shall be evaluated by the Brunswick County Sheriff's Office Command Staff, with final approval of recommended award by Brunswick County Sheriff. Brunswick County shall not be deemed to have finally selected a contractor until a contract has been successfully negotiated and signed by both parties.

12. NON-DISCLOSURE OF INFORMATION

Contractor and its agents shall treat all data and information associated with this Request for Proposals, including, without limitation, the Request for Proposals, all reports, recommendations, specifications and other data as confidential. Contractor and its agents shall not disclose or communicate any information to a third party or use such information in advertising, propaganda and/or in another job or jobs, unless prior written consent is obtained from Brunswick County.

13. NORTH CAROLINA PUBLIC RECORDS

All proposals received by Brunswick County shall be considered public information subject to lawful disclosure under North Carolina Public Records Law. Any proposal material deemed by the contractor to constitute either proprietary or trade secret material shall be designated as such, and each page or section of a page containing such material shall be so marked by the contractor. In addition, it shall be the sole responsibility of the contractor to demonstrate to a court of competent jurisdiction that their designation is proper. Brunswick County shall not make public any material determined by a court of competent jurisdiction to be proprietary or trade secret. Contractor hereby agrees to indemnify and hold Brunswick County harmless from any and all claims, suits, damages, penalties or expenses arising out of contractor's proprietary or trade secret designation.

14. AMENDMENTS/CHANGE ORDERS

After a project is awarded to a contractor and the parties enter into a formal agreement, a written amendment or change order will be required for any changes to the scope of the project.

15. CERTIFICATION

Contractor hereby certifies that it has carefully examined this Request for Proposals and all attachments hereto, that it understands and accepts all terms and conditions and the scope of work, and that it has knowledge and expertise to complete the project. By submitting a proposal, contractor certifies that its proposal is in all respects fair and without collusion or fraud.

NORTH CAROLINA

SERVICES AGREEMENT

BRUNSWICK COUNTY

THIS SERVICES AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as “County”), party of the first part, and {Contractor Name}, (hereinafter referred to as “Provider”), party of the second part.

WITNESSETH:

1. SERVICES; FEES

The services to be performed under this Agreement (hereinafter referred to collectively as “Services”) and the agreed upon fees for said Services are set forth on Exhibit “A” attached hereto.

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Agreement. Any conflict between the language in an exhibit or attachment and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

2. TERM OF AGREEMENTTERMINATION

The initial term of this Agreement begins on {Effective Date} (the “Effective Date”) and continues in effect for an initial term of one (1) year until {Expiration Date}, unless sooner terminated as provided for herein. The initial term shall be followed by two (2) successive options to renew for one (1) year each. Each renewal option is to be exercised automatically unless either party gives notice of its intent not to renew at least sixty (60) days prior to the end of the then-current term. The County may terminate this Agreement at any time without cause by giving sixty (60) days’ written notice to Provider. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to County showing in detail the work performed under this Agreement through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, County may terminate this Agreement immediately and without notice to Provider if Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Provider, or has a receiver or trustee appointed for substantially all of its property, or if Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

3. NONAPPROPRIATION

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Provider of the non-appropriation

and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

4. COMPENSATION

The County agrees to pay fees as specified in Exhibit "A" or as set out above for the Services satisfactorily performed in accordance with this Agreement. Unless otherwise specified, Provider shall submit monthly invoices to County and include detail of all Services delivered or performed under the terms of this Agreement. County shall pay all undisputed and properly completed invoices within thirty (30) days of receipt. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Provider, the County shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice County for the previously disputed charges, and, per any resolution between County and Provider, the County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Provider under this Agreement.

5. INDEPENDENT CONTRACTOR

Both County and Provider agree that Provider shall act as an independent contractor and shall not represent itself as an agent or employee of the County for any purpose in the performance of its duties under this Agreement. Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, Provider shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Provider shall not be entitled to participate in any plans, arrangements or distributions by the County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and the Provider is responsible for all income taxes and social security payments thereon.

6. PROVIDER REPRESENTATIONS

- (1) Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- (2) Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;

- (4) In connection with Provider's obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;
- (5) Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- (6) Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- (7) The Services provided by Provider under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements);
- (8) Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;
- (9) Provider acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and
- (10) Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies and security procedures applicable to work on the County's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

7. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

Provider shall be solely responsible for any damage to or loss of the County's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of Provider or its subcontractors. In the event that Provider causes damage to the County's equipment or facilities, Provider shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to such damage.

8. NON-ENDORSEMENT AND PUBLICITY

County is not endorsing Provider or its Services, and Provider is not permitted to reference this Agreement or County in any manner without the prior written consent of County. Notwithstanding the foregoing, the parties agree that Provider may list the County as a reference in response to requests for proposals and may identify County as a customer in presentations to potential customers.

9. NON-EXCLUSIVITY

Provider acknowledges that County is not obligated to contract solely with Provider for the Services covered under this Agreement.

10. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

11. DEBARMENT

Provider hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any governmental department or agency. Provider must notify County within thirty (30) days if debarred by any governmental entity during this Agreement.

12. INDEMNIFICATION

Provider shall defend, indemnify and hold harmless County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind which may be brought or made against County or which County must pay and incur arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Provider, its employees or agents. Provider further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. Provider shall be fully responsible to County for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

13. INSURANCE

Provider shall procure and maintain in full force and effect at all times and at its sole cost and expense Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as may be required by County with limits acceptable to County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include County as an additional insured and as a certificate holder. Provider shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Provider shall have no right of recovery or subrogation against County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

14. WORKERS' COMPENSATION

To the extent required by law, Provider shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees

in the manner and to the extent required by such Act. In the event Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Provider shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Provider's obligations under this Agreement.

Provider agrees to furnish County proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

15. REMEDIES

- (1) **RIGHT TO COVER.** If Provider fails to meet any completion date or resolution time set forth, due to no fault of County, the County may take any of the following actions with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:
 - i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and Provider is again able to resume performance under this Agreement; and
 - ii. Deduct any and all expenses incurred by County in obtaining or performing the Services from any money then due or to become due Provider and, should the County's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.
- (2) **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.
- (3) **SETOFF.** Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.
- (4) **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- (5) **NO SUSPENSION.** In the event that County disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

16. TAXES

Provider shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Provider shall substantiate, on demand by the County, that all taxes and other charges are being properly paid.

17. HEALTH AND SAFETY

Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. Provider shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees in connection with performing the Services and other persons who may be affected thereby.

18. NON-DISCRIMINATION IN EMPLOYMENT

Provider shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Provider shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Provider is determined by the final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by County, and Provider may be declared ineligible for further County agreements.

19. COMPLIANCE WITH E-VERIFY PROGRAM

Pursuant to N.C.G.S. § 143-133.3, Provider understands that it is a requirement of this Agreement that Provider and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Provider agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Provider shall require its subcontractors to do the same. Upon request, Provider agrees to provide County with an affidavit of compliance or exemption.

20. CONFIDENTIAL INFORMATION

For purposes of this Agreement, the party disclosing Confidential Information is the “Discloser,” and the party receiving Confidential Information is the “Recipient.” “Confidential Information” shall mean any nonpublic information concerning the parties’ respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as “Confidential.” Confidential Information that

is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

- a. in the public domain through no fault of the Recipient;
- b. within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- c. lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- d. independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- e. disclosed with the prior written consent of the Discloser; or
- f. required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's sole expense.

21. OWNERSHIP OF WORK PRODUCT

Should Provider's performance under this Agreement generate documents or other work product that are specific to the Services hereunder, such documents or work product shall become the property of County and may be used by County on other projects without additional compensation to Provider.

22. NO ASSIGNMENT WITHOUT CONSENT

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and County shall not recognize any assignment in violation of this provision.

23. GOVERNING LAW AND VENUE

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

24. DISPUTE RESOLUTION

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

25. GOVERNMENTAL IMMUNITY

County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

26. NON-WAIVER

Failure by County at any time to require the performance by Provider of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

27. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

28. HEADINGS

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

29. SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

30. AMENDMENTS

No amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall be valid unless in writing and signed by authorized agents of both Provider and County.

31. NOTICES

- (1) **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- (2) **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- (3) **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

i. For the County: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022

ii. For the Contractor: _____

32. SIGNATURES

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

BRUNSWICK COUNTY

By: _____

Printed Name: Steven T. Stone

Title: County Manager

Date: _____

{ CONTRACTOR NAME }

By: _____

Printed Name: { Contractor Signatory Name }

Title: { Contractor Signatory Title }

Date: _____

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

EXHIBIT “A”
PROPOSAL/STATEMENT OF WORK/SCOPE OF SERVICES



BRUNSWICK COUNTY MINIMUM INSURANCE COVERAGE REQUIREMENTS

At contractor's expense, contractor shall procure and maintain the following recommended lines of insurance according to the scope of work. The County may choose to elect higher or lower coverages according to the work performed. Contractors must be insured by a licensed agent in North Carolina and rated A-VII or better by A.M. Best.

A. COMMERCIAL GENERAL LIABILITY

Covering all operations involved in this Agreement.

\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Each Occurrence
\$1,000,000 Personal and Advertising Injury Limit
\$ 5,000 Medical Expense Limit

B. WORKERS' COMPENSATION

Statutory limits covering all employees, including Employer's Liability with limits of:

\$500,000 Each Accident
\$500,000 Disease - Each Employee
\$500,000 Disease - Policy Limit

C. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 Combined Single Limit – Any Auto

D. PROFESSIONAL LIABILITY

\$1,000,000 Per Occurrence

E. POLLUTION LIABILITY INSURANCE

\$1,000,000 Per Occurrence

When a contractor is required to bind pollution/environmental coverage, the contractor must provide evidence of continuation or renewal of liability insurance for a period of three (3) years following termination of the agreement.

ADDITIONAL INSURANCE AND INDEMNIFICATION REQUIREMENTS

- A. Contractor agrees to defend, indemnify, and hold harmless Brunswick County, its officers, employees, and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Contractor, its employees or agents. Contractor further agrees to investigate, handle, respond to, defend and dispose of same at its sole expense and agrees to bear all other costs and expenses related thereto.

The Contractor's General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

BRUNSWICK COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED UNDER CONTRACTOR'S GENERAL LIABILITY INSURANCE.

- A. Before commencement of any work or event, Contractor shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.
- B. Contractor shall have no right of recovery or subrogation against Brunswick County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.
- C. Brunswick County shall have no liability with respect to Contractor's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of Contractor.
- D. All certificates of insurance must provide that the policy or policies shall not be changed or cancelled without at least thirty (30) days prior written notice.
- E. The Certificate of Insurance should note in the Description of Operations the following:
Department: _____
Contract #: _____
- F. Insurance procured by Contractor shall not reduce nor limit Contractor's contractual obligation to indemnify, hold harmless and defend Brunswick County for claims made or suits brought which result from or are in connection with the performance of this Agreement.
- G. In the event Contractor receives Notice of Cancellation of Insurance required pursuant to this Agreement, Contractor shall immediately cease performance of all services and shall provide Notice to Brunswick County's Legal/Risk Management personnel within twenty-four (24) hours.
- H. Certificate Holder shall be listed as follows;
ATTENTION: Brunswick County Risk Manager
30 Government Center Dr. NE
P.O. Box 249
Bolivia, NC 28422
- I. If Contractor is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, Contractor shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of services.

Revised 01/2015

CONTRACTOR INFORMATION

Name of Company _____

Address _____

Phone No. _____ Fax No. _____

E-Mail Address _____

Federal I.D. No. _____

SDBE, Minority or Woman Owned Business Enterprise _____ Yes _____ No

Proposal Submitted By: _____
(Printed Name)

(Signature)

Title: _____

Date: _____